NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO. Case 4-CA-36217

August 29, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on July 1, 2008, the General Counsel issued the complaint on July 10, 2008, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 4–RC–21263. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.¹

On August 4, 2008, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support of Motion. On August 5, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment²

In its amended answer and response, the Respondent admits its refusal to bargain, but contests the validity of

¹ The Respondent's answers deny knowledge or information sufficient to form a belief concerning the filing and service of the charge, but admit that it received a copy of the charge on or about July 2, 2008. Accordingly, we find that the Respondent's denials in this regard do not raise any issue of fact warranting a hearing.

the certification on the basis of its objections to the election in the representation proceeding.³

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the operation of a casino at Mississippi Avenue and the Boardwalk in Atlantic City, New Jersey (the Casino). During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$500,000 and purchased and received at the Casino goods valued in excess of \$5000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on March 31, 2007, the Union was certified on May 30, 2008, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time dealers employed by Respondent at its Mississippi and the Boardwalk, Atlantic City, New Jersey facility, excluding all other em-

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

³ The Respondent contests the validity of the Union's certification on the basis that the Board lacked a quorum on May 30, 2008, when it issued the Decision and Certification of Representative in the underlying representation case, 352 NLRB No. 76 (2008). However, this defense is without merit for the reasons stated above in footnote two.

⁴ Thus, we deny the Respondent's request that the complaint be dismissed in its entirety.

ployees, cashiers, pit clerks, clerical employees, engineers, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collectivebargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated June 5, 2008, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. By letter dated June 25, 2008, the Respondent notified the Union that it would not bargain with it. We find that the Respondent's refusal to bargain with the Union constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing since June 25, 2008, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino, Atlantic City, New Jersey, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to recognize and bargain with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time dealers employed by Respondent at its Mississippi and the Boardwalk, Atlantic City, New Jersey facility, excluding all other employees, cashiers, pit clerks, clerical employees, engineers, guards and supervisors as defined in the Act.

- (b) Within 14 days after service by the Region, post at its facility in Atlantic City, New Jersey, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 25, 2008.
- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 29, 2008

Peter C. Schaumber,	Chairman
Wilma B. Liebman,	Member

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL—CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WIL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time dealers employed by us at our Mississippi and the Boardwalk, Atlantic City, New Jersey facility, excluding all other employees, cashiers, pit clerks, clerical employees, engineers, guards and supervisors as defined in the Act.

TRUMP PLAZA ASSOCIATES D/B/A TRUMP PLAZA HOTEL AND CASINO